

COMMITTEE ON LEGISLATIVE RESEARCH
 OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3880-07
Bill No.: SCS for SBs 969, 673 & 855
Subject: Crimes and Punishment
Type: Original
Date: March 5, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue	(\$112,500 to Unknown)	(\$115,374 to Unknown)	(\$115,759 to Unknown)
Total Estimated Net Effect on <u>All</u> State Funds	(\$112,500 to Unknown)	(\$115,374 to Unknown)	(\$115,759 to Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety – State Highway Patrol** and the **Department of Elementary and Secondary Education** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Prosecution Services** assume prosecutors could absorb the costs of the proposed legislation within existing resources.

Officials from the **Office of State Courts Administrator** assume some cases may become protracted, but would not expect a significant increase in the workload of the courts.

Officials from the **Department of Social Services (DOS)** assume there will be no cost to the DOS resulting from participation on the Notice Guideline Committee as members' expenses are to be paid by the Department of Corrections.

Officials from the **Office of State Public Defender** assume existing staff could continue to provide representation in cases arising where indigent persons were charged with statutory rape or sodomy or child abuse. However, these cases could become more time consuming due to the fact that anyone convicted would now have to serve at least 85% of their time. The Public Defender can provide representation to indigent persons accused of having sexual contact with an inmate with existing staff. Last FY, the State Public Defender System provided representation in 182 rape cases and 87 sodomy cases. Passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing indigent persons accused in the now more serious cases or in the new additional cases.

Officials from the **Office of Attorney General (AGO)** assume ½ FTE Paralegal (each at \$22,500 per year plus fringe benefits) will be required to receive and review the new referrals that will occur with all sexual offender convictions being referred to the AGO on the potential sexual predator list. The AGO estimates these costs at \$12,500 in FY 03; \$15,375 in FY 04; and \$15,759 in FY 05. There may also be an increase in the number of petitions filed in sexually violent predator cases. The cost of these additional cases is unknown.

Officials from the **Department of Corrections (DOC)** have determined the following sections would fiscally impact their department:

§556.061. Forcible rape and forcible sodomy are added to the list of dangerous felonies in this section. Adding forcible rape and forcible sodomy to the list of dangerous felonies appears to be unnecessary because both offenses are listed as dangerous felonies in 556.061, section 8.

ASSUMPTION (continued)

An examination of DOC offense records of inmates with a conviction for one of these two offenses but without a dangerous felony indicator indicated that the few such offenders had either 1) been convicted of the offense as inchoate and were, therefore, of a lesser felony class or 2) the offender had been convicted of a sex offense other than forcible rape or forcible sodomy but had been charged under those statutes (566.030 or 566.060).

There is no indication from DOC records that some convictions for forcible rape or forcible sodomy are not being classed as dangerous felonies and no fiscal impact is expected from this component of the bill.

§566.145. This proposed legislation criminalizes sexual intercourse or deviate sexual intercourse between correctional staff and an inmate and is punishable as a class C felony. Offender sexual contact is currently prohibited in §217.405, also punishable as a class C felony. The DOC's procedure strictly prohibits the type of criminal behavior outlined in this bill. Class C felons have an average length of stay in prison of 3.8 years. There were no admissions to DOC in FY01 for offender sexual abuse by an employee. Supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

§589.430. It is unknown how many qualifying sex offenders will be under community supervision at the time when assessments will need to be performed. The DOC has no means to gauge how many qualifying sex offenders are in the community, but not under the DOC's supervision. It is unknown how that number will be determined, and under what authority the DOC will be able to compel these registrants to submit to an assessment.

The proposal does not require that this assessment be completed by a qualified mental health professional, therefore, the next most likely assessors would be Probation and Parole (P&P) Officers. The Institutional Parole Officers (IPOs) would be required to provide the risk assessment on sex offenders leaving prison. The field P&P officers would be responsible for completing the risk assessment on newly opened sex offender probation cases. Both of these routine assessments would be additional workload factors for the existing P&P officers. It is unknown how the DOC would fund/staff the one-time, retrospective assessment of all sex offenders under supervision and sex offenders required to register, but not under the department's supervision.

ASSUMPTION (continued)

This bill requires a risk assessment instrument in addition to the more general risk assessment process to be administered which contains the listed elements. The language includes most of the risk factors currently believed to predict sexual recidivism. However, that literature is constantly changing and new risk factors are being identified and former risk factors discarded. When the current risk factors are given statutory prominence, it would take subsequent statutory changes to modernize or update the risk assessment requirements. The Notice Guidelines Committee could procedurally update assessment requirements to keep them current. Committee expenses cannot be estimated.

Several instruments would need to be scored by the P&P officers to address the statutorily required risk factors: 1) RRASOR (Rapid Risk Assessment For Sex Offense Recidivism), 2) MnSOST-R (Minnesota Sex Offender Screening Tool- Revised) and the PCL-SV (Hare Psychopathy Checklist- Screening Version) or the PCL-R (full Hare PCL). At a minimum, it would take the P&P officer 2 to 3 hours to review departmental records and score these three instruments. If inadequate records existed, an interview of the offender to gain enough information would be required if there was to be any confidence in the scoring of the instruments. This additional interview would be another workload factor.

DOC Behavioral Health Services Administrators understand this model legislation has been enacted in other states to reduce the length of the registration time period for those offenders judged to be low and moderate risk. Missouri would still require lifetime registration of all sex offenders even those judged to be low risk to re-offend.

The DOC's requirement to offer and successfully complete sex offenders from the MO Sex Offender Program (MoSOP) may prove to be more difficult to fulfill. In most offenders' cases, the self-report information required to successfully complete MoSOP would only serve to increase their level of assessed risk in this end of confinement risk assessment process. More offenders would refuse to attempt MoSOP to avoid self-incrimination that would enhance their risk at being civilly committed as a sexually violent predator or being placed in the high-risk group with significant notification requirements. DOC Administrators in this field do not believe that the scientific literature indicates that increased notification requirements has any impact on sex offender re-offense rates. Failure to register as outlined could also result in incarceration or supervision costs.

This section also requires the DOC to maintain a database of information on each offender, provide notification to the victims, DPS and DSS and respond to public inquiries on the offender's location, aliases, physical description and nature of convictions. Additional staff would be required to organize and disseminate this information. Modification of the Vines (Victims Notification) Program and the Offender Management database (OPII) would be required and this would be costly. Staff may be required in the Victims' section as well.

ASSUMPTION (continued)

Estimated fiscal impact for this section is estimated to be significant or well in excess of \$100,000 per year.

§632.483 This section seems to be aimed at including additional sex offenses in the list of qualifying offenses for civil commitment as a sexually violent predator. If included therein, the revised section would add the following qualifying sex offenses for sexually violent predator consideration: 1) Statutory rape, second degree; 2) Statutory sodomy, second degree; and 3) Sexual misconduct, first, second and third degrees. The revised language would remove Abuse of a Child when it involves sexual contact [§568.060.1(2)] from the list of qualifying offenses.

The fiscal impact of this section change would send between 30-40% more inmate sex offenders to the Sex Offender Assessment Unit (SOAU) staff for second-level, Sexually Violent Predator (SVP) evaluations. Since the services are now provided under a bid contract which was let with different workload assumptions in the RFP, increasing this workload number may prompt the contractor to exercise the contract provision that allows them to ask for funds for increased workload. The cost of this would be unknown.

In summary, passage of this bill has the potential to have significant fiscal impact for the DOC or in excess of \$100,000 per year.

Officials from the **Department of Mental Health (DMH)** assume the only sections affecting the DMH are sections 589.430 and 632.483:

Section 589.430 was assumed to require nothing from the Department of Mental Health other than serving on the “notice guideline committee.” If the DMH were required under this bill to assist in reviewing specific sex offender risk assessments, there could be substantial costs and FTE required to comply.

Section 632.483 adds language which appears to increase the number of individuals who are considered for commitment as a Sexually Violent Predator. If the intent is to increase the number individuals considered for commitment as a Sexually Violent Predator, this will have a significant fiscal impact. From previous discussions with DOC on similar bills, the language may increase the number of individuals considered for referral by 30-40 %. Assuming a current referral rate of 20-25 individuals per year, the 30-40% increase could result in an increase in referrals of between 6-10 individuals per year. Six additional referrals would require a new ward to be opened in 4 years, 10 additional referrals would require a new ward to be operational in 2.5 years. The current operating budget for 3 wards (Core plus cost to continue for 3rd ward) is \$4,190,130 resulting in an approximate per ward cost of \$1,396,710. The need for opening additional wards depends upon the number of new commitments received based upon the provisions of this bill. The cost data given is to be used only as an example based upon a ASSUMPTION (continued)

hypothetical rate of increased commitments and the current operating cost of a new ward.

<u>FISCAL IMPACT - State Government</u>	FY 2003	FY 2004	FY 2005
GENERAL REVENUE FUND			
<u>Costs – Office of Attorney General</u>			
Personal Service (½ FTE)	(\$9,375)	(\$11,531)	(\$11,820)
Fringe Benefits	<u>(\$3,125)</u>	<u>(\$3,843)</u>	<u>(\$3,939)</u>
Total costs – AGO	(\$12,500)	(\$15,374)	(\$15,759)
<u>Costs – Department of Corrections</u>			
Incarceration/probation costs (\$566.145)	Less than (\$100,000)	Less than (\$100,000)	Less than (\$100,000)
Sex offender assessment, database, program (\$589.430)	More than (\$100,000)	More than (\$100,000)	More than (\$100,000)
Sexually violent predator (\$632.483)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
Total costs – DOC	More than (\$100,000)	More than (\$100,000)	More than (\$100,000)
<u>Costs – Department of Mental Health</u>			
Assessment/commitment costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	(\$112,500 to <u>Unknown</u>)	(\$115,374 to <u>Unknown</u>)	(\$115,759 to <u>Unknown</u>)
 <u>FISCAL IMPACT - Local Government</u>			
	FY 2003	FY 2004	FY 2005
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would include attempted forcible rape and attempted forcible sodomy in the definition of dangerous felonies to Missouri statutes.

The proposal would require the board of probation and parole to consider information listed on the juvenile sex offenders registry if the offender being considered for parole is less than twenty-one years old.

The proposal would create the class C felony of sexual contact with an inmate. A person who is an employee of or assigned to work in any correctional facility who has sexual intercourse or deviate sexual intercourse with an inmate or resident of the facility would be guilty of the crime.

This proposal would require persons required to register as sex offenders under current law to register with county or city not within a county officials within 10 days of moving to another county or city not within a county or being released from custody.

The proposal also would require sex offenders to be assessed on the basis of the offender's risk to commit any act that would require the offender register as a sexual crime offender. Assessment would be required in the following circumstances: (1) All offenders required to register that have not been previously assessed; (2) Department of Corrections releases offender for supervision in the community; (3) Department of Corrections releases offender due to completion of sentence or at the direction of a court; (4) Department of Corrections accepts offender for supervision in the community upon court order; and (5) Department of Corrections is advised by the department of another state that the offender is residing, employed, carrying on a vocation, or is a student in this state.

Current law requires either the Department of Corrections or the Department of Mental Health to inform the Attorney General and the appropriate multidisciplinary team of certain identifying information and provide them with documentation of treatment history and institutional adjustment for individuals who meet the criteria of sexually violent predators. This proposal would add this requirement for offenders who have pled guilty or been found guilty of any sexual offense.

This proposal contains an emergency clause.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of State Courts Administrator
Department of Elementary and Secondary Education
Department of Social Services
Department of Public Safety
 – State Highway Patrol
Office of Prosecution Services
Office of State Public Defender
Department of Corrections
Department of Mental Health



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